

**IN THE MATTER** of the *Insurance Act*, R.S.O. 1990, c.l.8, and Regulation 283/95

**AND IN THE MATTER** of the *Arbitration Act*, S.O. 1991, c.17

**AND IN THE MATTER** of an Arbitration between:

THE CO-OPERATORS

Applicant

- and -

THE HALIFAX INSURANCE COMPANY

Respondent

### **AWARD**

This is a controversy between two automobile insurers. Ms. Philippa Samworth appeared on behalf of the applicant, The Co-operators, and Mr. Eric Grossman appeared on behalf of the respondent, The Halifax Insurance Company.

This matter was brought before me, pursuant to the *Arbitrations Act*, 1991, to arbitrate a dispute between Co-operators and Halifax. The parties agreed to submit the issue to me pursuant to the *Arbitrations Act* and have reserved the right to appeal any decision on a point of fact, law or a mixed point of fact and law to a judge without leave of the court.

The dispute between the parties involves a determination as to which of the insurers has the obligation to deal with statutory accident benefits, payable respecting injuries suffered by Sherri Pallister in an accident that occurred October 9, 1998. The essential dispute between the parties has to do with the status of Sherri Pallister as a dependant of Debbie Pallister.

Under the Ontario Automobile Insurance plan in place during 1998, insured persons are entitled to a very substantial compensation as set out in the Statutory Accident Benefits Schedule, established under the *Insurance Act*. These benefits are payable without determination of fault. In this case, Sherri Pallister has suffered very significant injuries and has potential entitlement to substantial compensation under the Statutory Accident Benefits Schedule.

Under the *Insurance Act* and the Schedule and the Ontario Standard Automobile Policy a scheme is created whereby any individual involved in a car accident will have access to an automobile insurer, from which to claim benefits. It is not necessary that the injured individual be the policyholder. The injured individual may acquire the status of being an "insured person" by being a spouse or dependant of a named insured, or by being an occupant of an insured vehicle, or by being struck by an insured vehicle, or by being involved in an accident that involves an insured vehicle. Through a variety of mechanisms, an individual may have access to benefits. Conversely, when an accident occurs it is common that the injured individual has the status of being an "insured person" under more than one policy. To address this multiplicity of insurance coverage, the *Insurance Act*, in section 268, sets out a priority scheme. In those

provisions, the legislature has determined which insurer must pay benefits when more than one policy is potentially accessed. Most germane to this case is the question of dependency. Where a person is a dependant of a named insured, they are required to claim the benefits from the policy that is issued to that named insured upon which the insured person is dependant.

Where a person is not a named insured or a spouse or dependant of a named insured, the Ontario *Insurance Act* provides that the person may claim the benefits from the insurer of the vehicle they occupied at the time of the accident.

### **Proceedings**

The *Insurance Act* and the regulations thereunder recognize that disputes will arise between insurers. Some of these disputes will deal with the question of which insurer must pay Statutory Accident Benefits. In addition to the provisions set out in section 268 of the *Insurance Act*, Ontario Regulation 283/95 requires the insurers to submit the dispute to an arbitrator pursuant to the *Arbitrations Act*, 1991. The court ordered the submission of this matter to arbitration on November 30, 1999. In addition to the order submitting the matter to arbitration, the parties executed an arbitration agreement in April of 2001. That arbitration agreement, as amended at the hearing, is annexed to this as "Appendix I".

Prior to the hearing in this matter, there were pre-hearing telephone conferences. The parties also arranged for the examinations, under oath, of Sherri Pallister and Debra Pallister. In total, the parties have put the following information before me as the basis for a decision:

1. An agreed Statement of Facts, dated April 18, 2001.
2. A Joint Documents Brief consisting of 18 documents.
3. A 19<sup>th</sup> document agreed to as an addition to the Joint Document Brief consisting of information about Co-operators calculation of income replacement benefits.
4. The transcript of the examination of Sherri Pallister from September 13, 2000.
5. The transcript of the examination of Debbie Pallister from September 13, 2000.

The proceedings brought before me in April of 2001 were for the purpose of determining the initial issues of the applicable insurer responsible to pay benefits. I did not receive submissions and I do not intend, at this stage, to make a decision with respect to the quantum of the dispute between the parties.

### **The Factual Background**

Co-operators and Halifax are both insurers carrying on business in the province of Ontario. They both issued Ontario automobile policies with respect to vehicles that are ordinarily present in the province of Ontario. They have issued their policies to individuals who reside in the province of Ontario. All of the insurance transactions took place in Ontario.

On October 9, 1998, Sherri Pallister was a passenger in a vehicle insured by Halifax when that vehicle became involved in a serious motor vehicle accident in the province of New Brunswick.

As a result of serious injuries sustained, Sherri Pallister is entitled to advance claims under the Ontario policies issued, for statutory accident benefits. An application for statutory accident benefits was sent to Co-operators on or about December 7, 1998. Notice was duly given by Co-operators to Halifax, in accordance with the regulations under the *Insurance Act*, that Co-operators intended to dispute the obligation to pay accident benefits.

### **Excerpts from the Agreed Statement of Facts**

The following facts have been agreed to by the parties: (the numbers coincide with the numbers of the Agreed Statement of Facts)

4. On October 9, 1998, Sherri Pallister was involved in a head-on motor vehicle accident which occurred on the Trans-Canada Highway near Kingsclear, New Brunswick. At the time of the accident, Ms. Pallister was a passenger in a 1991 Ford Escort owned and operated by Jodi Currie.
5. At the time of the accident, the 1991 Ford Escort vehicle driven by Jodi Currie was insured by Halifax, by way of a standard Ontario automobile insurance policy.
6. At the time of the accident, Co-operators insured Debbie Pallister in respect of a 1987 Toyota Tercel, by way of a standard Ontario automobile insurance policy. Debbie Pallister is the mother of Sherri Pallister.
7. Each of Sherri Pallister, Debbie Pallister, Terry Currie and Jodie Currie were ordinarily resident in the Province of Ontario at the time of the accident.
8. Sherri Pallister did not have a motor vehicle or a motor vehicle liability policy in which she was a named insured at the time of the accident, nor was she a listed driver under any such policy.
9. As a result of the accident, Sherri Pallister sustained serious injuries, including paraplegia, and therefore qualifies for the designation as "catastrophically impaired" for the purpose of the *Statutory Accident Benefits Schedule, Accident on or after November 1, 1996*, Ontario Regulation 403/06 (hereinafter referred to as the "Schedule").
10. At the time of the accident, Sherri Pallister was 22 years old, with a date of birth of September 26, 1976. She was residing at 21 Queen Street South, Streetsville, Ontario, with her mother, Debbie Pallister, and her two siblings, Eddle (then aged 13) and Jessi (then aged 15), and had lived with her family in this arrangement for a period of approximately four years when the accident occurred.
11. The Co-operators received an Application for Statutory Accident Benefits from Sherri Pallister on or about December 7, 1998. Sherri Pallister applied for benefits against Debbie Pallister's policy of insurance, being policy 3538517, on the grounds that she was a dependant of Debbie Pallister's at the time of the accident.
12. The Co-operators notified Halifax that it intended to dispute priority with respect to Sherri Pallister's claim for accident benefits on or about November 20, 1998. A Notice to Applicant of Dispute Between Insurers form dated February 12, 1999 was duly served by the Co-operators on Halifax and on Sherri Pallister's solicitor.

16. At the time of the accident, Sherri Pallister lived with her mother, Debbie Pallister, and her two younger siblings. She had lived consistently in her mother's home for approximately four years preceding the accident.
17. At the time of the accident, Sherri Pallister was employed as a waitress for both "The Muddy Moose" and "Two Guys from Italy".
18. Sherri Pallister had been employed by "Two Guys from Italy" in a part-time capacity from October 10, 1997. Her status changed to full time a couple of months before the accident. An Employer's Confirmation of Income form signed by Ruth Gosselin in November of 1998 confirmed salary in the amount of \$4,946.75 from "Two Guys from Italy" for the 52 weeks pre-accident. In addition, the form makes reference to an amount of \$140.00 every two weeks in tips.
19. Sherri Pallister had also been employed as a part-time waitress at the "Muddy Moose Bar & Grill" for a period of a few weeks before the accident. In her Application for Accident Benefits, Sherri Pallister reported income in the amount of \$148.20 from that employment for the period of September - October, 1998.
20. The Co-operators initially calculated Sherri Pallister's income replacement benefit to be \$184.59 per week. At the request of her solicitor, the income replacement benefit calculation was revised to \$192.62 per week to allow for tip income of \$50.00 from The Muddy Moose. The claimant has an arbitration pending, wherein she asserts entitlement to an income replacement benefit of at "least \$275.00 per week and ongoing from October 15, 1998".

#### **The legal issue about the applicability of New Brunswick law or Ontario law to the payment of accident benefits**

At one time, the automobile insurance compensation systems through Canada were quite similar. In the past decade, Ontario has undertaken a number of changes in its automobile insurance compensation schemes. Other provinces have not followed Ontario's lead. New Brunswick appears to have an accident benefits program that is similar to the one that existed in Ontario prior to June 22, 1990. Excerpts from the New Brunswick *Insurance Act* were filed with me. Under the New Brunswick Insurance Scheme, it appears that New Brunswick insurance policies provide benefits only to persons who are occupants of the insured vehicle, or, contingently, benefits to the named insured, a spouse of the named insured, a dependant relative of the named insured, if they are an occupant of, or struck by, an uninsured automobile. Necessarily, under the New Brunswick's scheme, Sherri Pallister would not be an insured person under the Co-operator's policy because the vehicle in which she was an occupant was, in fact, insured by Halifax.

Through this drafting device, the scope of coverage under the New Brunswick Standard Policy leads to a situation where injured individuals can only make claims against the insurers of the vehicles in which they are occupants, except in those cases where there is no such insurance. This is quite different from the scheme set out in section 268 of the Ontario *Insurance Act*. Under the Ontario legislation, it is clear that the insurance coverage follows the individual and not the vehicle. Insured persons are expected to make claims against the policy of insurance where they are a named insured, a spouse of a named insured or a dependant of a named insured. They would only make claims against the insurer of the vehicle involved in the accident, if they had no such recourse.

Co-operators is suggesting that I apply the New Brunswick scheme's outcome to the Ontario contracts and statutory requirements. If I did, I would have to conclude that Sherri Pallister is not an insured person under the accident benefits section of the Ontario policy issued by Co-operators to Debbie Pallister.

Looking at the conflict of laws issued strictly from the point of view of contacts, this dispute has precious little nexus with the province of New Brunswick. This dispute is a dispute between two Ontario insurers, who have issued two Ontario standard policies, to two Ontario residents. The claim is a claim by an Ontario resident for services provided in Ontario, and for compensation for disability while she resides in Ontario. The fact that the underlying accident took place in New Brunswick has little relevance to the insurance contract disputes.

I observe that under the Ontario Standard Automobile Insurance Policy, coverage is provided to insured persons with respect to accidents that occur inside Ontario or outside of Ontario. The territorial scope of the policy includes all of Canada and the United States. Having entered into a contract in Ontario to provide benefits with that territorial scope, I do not think an insurer can be heard to say that the contractual obligation should somehow be limited, restricted, or completely excluded because the accident took place in the very policy territory contemplated, albeit outside of the province of Ontario.

Section 260 of the New Brunswick *Insurance Act* provides as follows:

**"Where a person, entitled to benefits provided by insurance under section 256 and section 257 or either of them;**

- (a) is an occupant of a motor vehicle involved in an accident, the insurer of the owner of the motor vehicle shall, in the first instance, be liable for a payment of the benefits provided by the insurance..."**

This creates a different priority regime with respect to persons who are insured under New Brunswick policies, which presumably provide the scheme of benefits set out in section 256 and 257 of the New Brunswick *Insurance Act*. We are concerned in this arbitration with a different set of benefits, the benefits provided under section 268 of the Ontario *Insurance Act*. Nothing in section 260 of the New Brunswick Act purports to address the priority of Ontario accident benefits, nor should it.

In short, there is no conflict between the Ontario law and the New Brunswick law on this issue. New Brunswick's law does not purport to address the priority of Ontario benefits and the Ontario law is not in any way inconsistent with New Brunswick statutory process. Nonetheless, I observe that, with respect to the insurance contractual issues, this is very much a matter of Ontario contracts with Ontario residents and on Ontario forms. I am not satisfied that there would be any reason to apply the law of another jurisdiction to interpreting these contractual issues.

Accordingly, I conclude that the priority scheme as set out in section 268 of the Ontario *Insurance Act* governs the obligation to pay Statutory Accident Benefits in this case.

### **Dependency issues**

As a result of a number of legislative provisions, and provisions of the Statutory Accident Benefits Schedule, it is clear that Sherri Pallister is an "insured person" under the policy of insurance issued by Halifax. Halifax was the insurer of the vehicle involved in the accident.

Pursuant to the Statutory Accident Benefits Schedule, "insured person" in respect of Halifax's motor vehicle liability policy means:

**"In respect of accidents outside Ontario, a person who is an occupant of the insured automobile and who is a resident of Ontario or was a resident of Ontario at some point during the 60 days before the accident..."**

Sherri Pallister was a resident of Ontario at the time of the accident and for the 60 days prior to the accident. Accordingly, as an occupant of the vehicle insured by Halifax, Sherri Pallister is indeed, an insured person under the Statutory Accident Benefits Schedule as applicable to the vehicle involved in the accident which was insured by the respondent.

Sherri Pallister's status vis-à-vis the Co-operators' policy is less clear. Co-operators insured Sherri's mother, Debbie Pallister, in respect of a 1987 Toyota Tercel.

It is conceivable that Sherri Pallister could qualify as being an "insured person" under the Co-operators' policy if she is a dependant of Debbie Pallister. The definition found in the Statutory Accident Benefits Schedule includes the following individual as an "insured person":

**"The named insured, any person specified in the policy as a driver of the insured automobile, the spouse of the named insured, and any dependant of the named insured, spouse or same sex partner, if the named insured, specified driver, spouse, or dependant,**

- (i) Is involved in an accident in or outside of Ontario that involves the insured automobile or another automobile,..."**

Debbie Pallister is the named insured under the Co-operators' policy. Sherri Pallister would qualify as being an "insured person" if she was a "dependant" of Debbie Pallister at the time of the accident.

If this is the case, then reference must be made to section 268 of the *Insurance Act* which sets out the priority rankings that determine which insurer must respond to a claim for Statutory Accident Benefits. Subsection 268(5) of the *Insurance Act* provides as follows:

**"Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle policy or the person is the spouse or a dependant, as defined in the Statutory Accident Benefits Schedule, of a named insured, the person shall claim statutory accident benefits against the insurer under that policy."**

Accordingly, if Sherri Pallister is a dependant of Debbie Pallister, she is obliged to claim the benefits from Co-operators and Co-operators is the highest-ranking insurer.

Subsection 2(6) of the Statutory Accident Benefits Schedule provides a definition that establishes the criteria of dependency as follows:

**"For the purpose of this regulation, a person is a dependant of another person if the person is principally dependant for financial support or care on the other person or the other person's spouse or same sex partner"**

Hence, I must determine Sherri's dependency status. This is an issue that has arisen in previous cases.

Some care must be taken when considering older case law that addresses dependency issues. The applicable definition has changed many times in recent years. Most importantly, the definition which has generally been applicable to determining dependency for the purpose of Statutory Accident Benefits since 1990 restricts the consideration of dependency to the very specific issue of financial support, and latterly, to the issue of care. The legislature has focused the dependency question to these narrow aspects of human relationships. Some case law, prior to 1990 took a broader view of the relationship between individuals when determining dependency questions. This is no longer called for by the mandated definition.

It is also worthy of note that the definition requires a dependency to be a "principal" dependency resulting in the determination that a person is only a dependant if they are "chiefly" or "for the most part" dependant on the other person. Mathematically, this suggests that the person's reliance on the other person must be for more than 50% of their need in a two-person relationship.

While various arbitration decisions and court decisions have addressed dependency issues, most recently the Ontario Court of Appeal gave some consideration to the applicable test when dealing with dependency questions. In the case of *Liberty Mutual v. Federation Insurance Company*, an endorsement of the Court of Appeal on April 10, 2000, the Court of Appeal approved of an arbitration decision which followed the previous decision of the Ontario Court of Appeal in *Miller v. Safeco*<sup>1</sup>, as applicable to questions under the Statutory Accident Benefits Schedule.

The case of *Miller v. Safeco*<sup>2</sup>, set out criteria for examining dependency, but did so in the context of somewhat different definitions. However, the approach to be taken is clear.

In *Miller v. Safeco*, Justice O'Brien suggested that a consideration be given to:

1. Amount of dependency;
2. Duration of dependency;
3. Financial other needs of the alleged dependant;
4. The ability of the alleged dependant to be self-supporting; and
5. The general standard of living within the family unit.

That decision of Justice O'Brien was appealed to the Court of Appeal. The Court of Appeal endorsed all of these criteria except the criteria of the "general standard of living within the family unit". Most importantly, the Court of Appeal sanctioned examination of dependency by looking at "the ability of the alleged dependant to be self-supporting".

Having regard to the fact that the current legislation focuses the issue on financial and care dependency, in my view, we are obliged to examine Sherri Pallister's "ability to be self-supporting" at the time of the accident. In fact, given the current definition which requires principal dependency, the question to be answered is whether or not Sherri Pallister had the ability to be self-supporting by providing for her own needs, more than such provision was required from any other source.

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<sup>1</sup> (1986) 13 C.C.L.I. 31  
<sup>2</sup> (1985) 9 C.C.L.I. 1

In my view, it is appropriate to measure dependency by examining the individual's capacity to provide for their own needs. In a financial context, it is necessary to look at the individual's capacity to generate an income. As with Sherri Pallister, an individual may have actual income but that income may only be partially reflective of her capacity. I conclude that income is evidence of capacity, but that capacity to earn may be somewhat greater than actual earnings in some circumstances. This is very relevant to Sherri Pallister's situation in view of the evidence put before me to indicate that more work hours were to be given to her which would have resulted in greater income. In short, her capacity to earn was larger than her earnings prior to the accident. However, examining an individual's ability to be self-supporting is not the end of the inquiry. We must go further and examine what this individual's needs were at the time of the accident. In my view, the financial dependency test requires us to form some understanding about the person's basic needs for food, shelter and the other necessities of life. Again, the actual circumstances at the time of the accident may provide some important evidence about the person's needs.

However, in the *Miller v. Safeco* decision in the Court of Appeal, we are instructed not to give consideration to "the general standard of living within the family unit". Accordingly, it is not appropriate to measure the person's "needs" by the family standard of living but we must measure their needs in a more objective context.

This distinction may be highly relevant when considering a family unit with a very high standard of living. However, the standard of living in the Pallister household was much more modest and I would not conclude that the general standard of living in the family unit provided for much beyond the basic needs of Sherri Pallister.

### **Care dependency**

The definition found in the Statutory Accident Benefits Schedule contemplates that an individual may be a dependant as a result of being principally dependant for care upon another individual. While I am sure many people who live in a household enjoy the benefit of assistance and services from other members of the household, I do not consider this to be "care" as contemplated by the regulation. It is most certainly not care that any adult able-bodied person depends upon.

In the Pallister household, there is no evidence of a relationship which would create a dependency for care to satisfy this branch of the definition.

### **Dependency for financial support**

The agreed Statement of Facts addresses some of the financial support issues. The transcript of examination of Sherri Pallister and the examination of Debbie Pallister sheds additional light on these issues. Various documents, which form part of the record, also touch upon these issues.

At the time of the accident, Sherri Pallister was living at home with her mother, with whom she had always lived, except for two years at about 1993. Although she is a young person, 22 years of age at the date of the accident, she had been out of school for a number of years and had been in the work force. While living at home, Sherri did not pay any rent or pay for any portion of the family's fixed monthly expenses. Nor did she receive a formal allowance before the accident, but she would occasionally receive small amounts of money from her mother without any expectation of repayment. Prior to the accident, Sherri Pallister only contributed "a very

small portion" towards her own monthly household expenses. She did help around the house by looking after younger siblings on occasion. She paid for her own clothes and personal items.

As a member of the household, she received the benefit of shelter and some meals. Working, as she did, in two restaurants, she found that she was eating many of her meals at her places of employment.

Debbie Pallister, at the time of the accident, was renting a house for which she paid \$800.00 or \$900.00 per month in rent. She lived in that household with Sherri Pallister and two younger children. The four of them lived in that household. The younger children were not in the work force.

Debbie Pallister worked full-time as a waitress and assumed the responsibility for paying all of the household bills and making ends meet. Including the rent, the monthly household expense was \$1200 or \$1300.

Sherri Pallister also worked as a waitress. At the time of the accident, she had two jobs. She worked in two different establishments.

She worked in one establishment called "Two Guys From Italy" and a second known as the "Muddy Moose". She had worked at "Two Guys From Italy" on a part-time basis for about one year prior to the accident. Her status changed to full-time a couple of months before the accident. For the preceding year, it is reported that her income from "Two Guys From Italy" consisted of a salary of just under \$5,000.00. In addition, there was reference to \$140.00 every two weeks in tips.

At tab 13 of the Joint Documents Brief, there is correspondence from this restaurant and a breakdown of her record of payment. That record clearly shows weekly income varying between about \$150.00 and \$190.00 per week from "Two Guys From Italy".

Additionally, Sherri Pallister was entitled to have additional hours upon her return from vacation. The accident occurred while she was on her vacation. It was expected that her hours would have been increased to 30 or 35 hours per week, yielding an hourly wage of \$210.00 to \$245.00 a week, plus tips. Assuming a proportionate increase in tips to go with the increase in hours, it seems clear that Sherri Pallister had the opportunity to earn more than \$300.00 a week from her employment at "Two Guys From Italy".

At the Muddy Moose, Sherri Pallister was getting additional hours. It is indicated that she was making about \$6.00 per hour at the Muddy Moose and could be expected to earn tips of between \$30.00 and \$50.00 per shift. A shift is apparently 6½ hours at the Muddy Moose. Referring to correspondence, at tab 14 of the Joint Documents Brief, it is indicated that she could begin to work two shifts per week on a regular basis which might be expected to yield a further income of about \$150.00 per week. However, it would have been necessary for Sherri Pallister to coordinate the hours at her two jobs in order to acquire all of the additional work that these employers were prepared to make available.

It is clear that Sherri's income from employment in the weeks prior to the accident was somewhat variable but I am satisfied that she had actual income of at least \$250.00 per week during the interval for which she was employed at both restaurants. Given Sherri's abilities as a good worker and given the evidence offered by the two restaurant employers, it appears that she would have been able to earn nearly \$500.00 per week if the restaurants did follow through

on their intended offers of additional hours etc. Without making any conclusion about what Sherri actually lost as a result of the accident, I am satisfied that Sherri Pallister had a capacity to earn income from employment which was greater than \$400.00 per week. This is supported by her actual earnings, including tips, and her willingness to work the additional hours when those were available to her. Having concluded that her actual earnings were approximately \$250.00 per week, it is clear that Sherri was not working to full capacity prior to the accident.

I must now consider how this capacity and actual earning record related to Sherri's personal needs.

Her share of the household rent, assuming an equal division of the cost, was about \$200.00 or \$225.00. There would be various utility costs to be added to that. An equal share of the total household expenditure would be \$400 - \$425 per month. Sherri did not have her own vehicle or the expenses associated with a vehicle. She did eat some of her meals at home but testified that she ate most of her meals while she was at her restaurant jobs. She paid for some of her own clothing and she received some amounts of money from her mother on occasion. She did not contribute to the rent in a financial way but she performed limited household activities that contributed to the family household.

I note, with considerable interest, the opinion of Debbie Pallister that it would have been quite feasible for her daughter, Sherri, to live independently by moving out with a roommate. This seems to me to be completely supported by the evidence.

I cannot find that Sherri Pallister was principally dependant for financial support on her mother at the time of the accident. While she certainly derived a benefit from being in the household with the rest of her family, she had the income and the income earning ability to live away from her family at any point. I certainly cannot conclude that she was principally dependant on her mother, as that would entail a finding that her mother's support was more significant than the financial resources that she could bring to bear to support herself. The evidence is to the contrary.

Whether one measures Sherri's actual earnings or whether one looks at her more significant ability to earn, she is clearly capable of providing chiefly for her own needs and was therefore not a dependant of her mother at the time of the accident.

As would be expected, as an able bodied young adult, in the workforce, Sherri Pallister was not principally dependant for financial support upon her mother at the time of the accident.

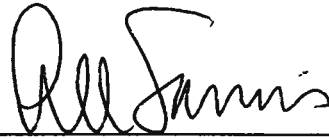
### **Conclusion:**

Referring to paragraph 2 of the Submission to Arbitration, issue (a), I find that The Halifax Insurance Company should bear responsibility for the previous and ongoing no-fault benefits claimed by and on behalf of Sherri Pallister as Sherri Pallister was not a dependant (as defined) upon Debbie Pallister at the time of the accident.

I will receive submissions with respect to costs within 30 days, or such later time as the parties otherwise agree to in writing. I suggest that the submissions may be made by telephone conference.

In accordance with the arrangements the arbitration may be resumed for the purpose of dealing with the amount of reimbursement and interest payable.

DATED at Toronto this 14<sup>th</sup> day of December, 2001.



A handwritten signature in cursive script, appearing to read "Lee Samis", is written above a horizontal line.

LEE SAMIS

Attachment:  
Appendix I - Arbitration Agreement

